IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6763 OF 2004

Kishor Sitaram Gangavane .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mrs. Swati Sawant with Mr.Rakesh Bhatkar for the petitioner

Mr.V.P.Malvankar, A.G.P. for the respondents

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 27TH AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J):

1. The petitioner in the present petition was appointed to the post of Clerk. The said appointment was on compassionate ground. The father of the petitioner was working as Primary Teacher in a school run by Zilla Parishad, Ratnagiri. He died of a massive Heart attack on 5th September 1995. In view of the death of the

father of the petitioner, the petitioner was listed in a category of persons seeking employment on compassionate ground. As soon as the vacancy of a clerk arose in the office of the 2nd respondent the petitioner was appointed therein by letter dated 2nd January 1999. On 1st June 1999 the petitioner was promoted as "Junior Grade Clerk" in the pay scale of Rs.3050-75-3950-80-4590 once again on compassionate grounds. As per the Government Resolution bearing no.SRV-1075-X dated 19th September, 1975, a person who is appointed in the category of compassionate ground his appointment is required to be on the temporary basis for a period of 3 years and it is only after his completion of period of 3 years a person can be made permanent. The relevant portion of the said resolution dated 19th September 1975 reads as under:

> "2. With a view to allowing full service benefits to such Government servants, Government has now decided that the benefit of permanency in service should no longer be dependent on the availability of permanent posts. Government is accordingly pleased to direct that, subject to the conditions specified below, every Government servant who has rendered continuous service for not less

than three years in a post or posts (excluding those on the converted Regular Temporary establishment) included in a cadre should be deemed to be a permanent Government servant for all purposes, including the admissibility of full pensionary benefits.

CONDITIONS

(1) The original appointment of the Government Servant concerned to the respective post or cadre must have been made in conformity with the relevant recruitment rules, and the prescribed method of recruitment.

(2) The Government servant concerned must have produced the requisite physical fitness certificate and must have passed the prescribed departmental examination or test, if any.

(3) The Government servant concerned must possess a good record of service in Government.

3. In the case of every Government servant who satisfies these conditions and becomes eligible to be treated as a permanent Government servant, a declaration to that effect should be issued by the authority competent to appoint him to the particular post as soon as possible after completion of continuous service of not less than three years in the relevant post or cadre. On such declaration being recorded, the Government servant concerned should be held eligible for all benefits of a substantive status in Government service."

2. In the present case, the petitioner had not completed his period of 3 years. However, it was found that he never took interest in his job and

continued to remain absent on service during a large period of his service with the 2nd respondent Department. It seems that there has been a criminal complaint filed against him and his wife u/sec. 342, 504, 506, 34 of the Indian Penal Code vide C.R. No.34 of 2002. The said complaint is filed on the ground that the petitioner's wife confined one Kum. Tawade at her residence and also assaulted her. The said girl was minor and aged of only 12 years. It is a charge against the petitioner that he and his wife had inflicted torture and multiple physical injuries on the body of the said minor girl.

3. In the aforesaid circumstances, the services of the petitioner was discharged and or discontinued. The petitioner filed an application before the Maharashtra Administrative Tribunal challenging the said order of termination being O.A. No.375 of 2002. The petitioner contended before the Tribunal that he should be reinstated in service with full back wages. It is his case that his services cannot be terminated without enquiry and without

giving the charge sheet since he was appointed in a clear permanent vacancy. In so far as his services are concerned, the respondents have before the Tribunal stated as under:

> "It is a fact that, the applicant had not completed 3 years continues service by the date of passing of the impugned order. Regarding passing of departmental examination it is stated in the affidavit in reply that the applicant deliberately avoided to appear for Jr.Grade Clerk's examination held in 2001. Regarding the condition No.3 as to the good service record required for confirmation, it is seen that the performance of the applicant had been very unsatisfactory. There are written reports of his superiors on record as to how the applicant had remained absent frequently and had not shown any improvement in his work in spite of repeated warnings.

4. The Tribunal has considered the rival contention and has given the following conclusion:

i. That the petitioner is a temporary employee as he has not completed 3 years of service.

ii. The conduct on the part of the petitioner both in service and outside has not been satisfactory

and not becoming of a government servant.

iii. The order passed by the authorities is not perverse thus does not required to be interfered with.

5. It is this order of the Tribunal which has been a subject matter of challenge in the present petition.

6. We have heard the learned Advocate appearing for the petitioner at length. We do not see any reason to take a different view than the view taken by the Tribunal. We are of the opinion that the petitioner having obtained an employment on a compassionate ground, his service record ought to be of a good nature and character. We find that in the instant case the authorities are not at all satisfied with his work. He has not been regular in service and also found to be inefficient. That apart from the record it reveals that serious criminal charges have been registered against him.

7. In view of the fact that under G.R. dated 19th September 1975, which governs the condition of the services of the petitioner, the petitioner is required to be confirmed only after a period of 3 years and till that time the appointment of petitioner is temporary. Once it is held that the services of the petitioner is temporary then it is not necessary for the authorities to conduct elaborate departmental enquiry against the petitioner. The overall performance of the petitioner has not been found satisfactory. Thus, we see no reason to interfere with such an opinion of the authorities in writ jurisdiction under Article 226 of the Constitution of India. In so far as the order impugned is concerned, we do not find any infirmity or error either in facts or in law. Thus, we dismiss the present writ petition and confirm the order of the Tribunal. However, there shall be no order as to costs.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.